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February 6, 2020

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of SC
101 Executive Center Dr., Suite 100
Columbia, SC 29210

Re: Exploration of a South Carolina Competitive Procurement Program for the Competitive Procurement of Energy and Capacity from Solar and Other Renewable Energy Facilities by an Electrical Utility as Allowed by South Carolina Code Section 58-41-20(E)(2) (See Directive Issued on November 25, 2019)
Docket 2019-365-E

Dear Ms. Boyd:

Dominion Energy South Carolina, Inc. ("DESC") is pleased to file the following comments in response to Order Number 2020-55 of the Public Service Commission of South Carolina (the "Commission"). That order was entered on January 22, 2020. It directed interested parties to "file suggestions for the next steps in [the] process" for consideration of S.C. Code Ann. § 58-41-20(E)(2).

Scope of the Proceeding

The current docket was initiated by Order No. 2019-817 which was entered in a docket begun by Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC (Docket No. 2018-202-E)[1] and also filed in the newly opened docket for this proceeding. As set forth in Order No. 2019-817, the questions to be considered concern "creating programs for the competitive procurement of energy and capacity from renewable energy facilities by an electrical utility within the utility's balancing authority area if the commission determines such action to be in the public interest."

[1] This letter represents DESC's first opportunity to comment on the substantive matters at issue in this docket. DESC was not a party to Docket No. 2018-202-E.

This language properly states the scope of this proceeding as defined by the operative language of S.C. Code Ann. § 58-41-20(E)(2).

Specifically, through S.C. Code Ann. § 58-41-20(E)(2), the General Assembly has delegated to the Commission the authority and jurisdiction to determine whether it would be in the public interest to open "a generic docket for the purposes of creating programs for the ***competitive procurement of energy and capacity from renewable energy facilities*** by an electrical utility within the utility's balancing authority area . . ." (emphasis supplied). As the highlighted language indicates, the authority delegated by S.C. Code Ann. § 58-41-20(E)(2) is for the limited purpose of evaluating the possibility of adopting programs for renewable energy and capacity procurement and whether the public interest would support doing so. The language used by the General Assembly clearly negates any intent to grant the Commission new authority to create programs for the competitive procurement of all generation resources, as the comments filed by the South Carolina Office of Regulatory Staff ("ORS") appear to assume.

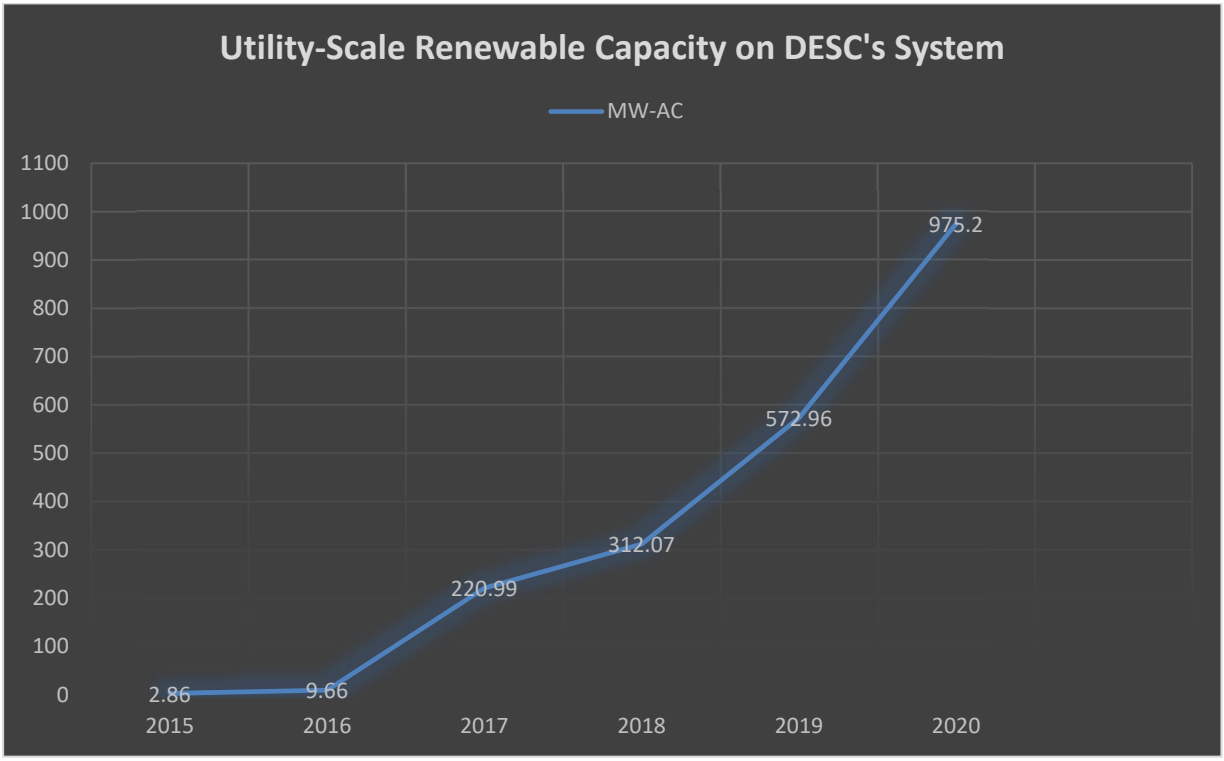
The grant of authority made by S.C. Code Ann. § 58-41-20(E)(2) is further limited by the requirement that the renewable energy facilities from which energy and capacity could be procured must be physically located "***within the utility's balancing authority area.***" *Id.* (emphasis supplied). Any solicitation of capacity or energy resources for general system requirements would need to include off-system resources, *i.e.,* facilities located outside of the utility's balancing area, to achieve meaningful results. This has been the approach used in past solicitations. Excluding off-system energy and capacity resources from solicitations to meet general system requirements could result in higher costs to ratepayers because potentially competitive generating resources would be excluded from consideration.

Therefore, DESC respectfully requests that the Commission apply the terms of S.C. Code Ann. § 58-41-20(E)(2) as written and evaluate whether programs for the competitive procurement of energy and capacity from renewable energy facilities within its balancing area are necessary to support the public interest at this time. DESC would show that such programs are not currently necessary in light of the rapid growth of renewable resources on its system and its ongoing obligation to purchase all cost justified renewable resources located in its balancing area that are tendered to it under the terms of Act No. 62 of 2019 and the Public Utility Regulatory Policies Act of 1995 as amended ("PURPA"). In the absence of any demonstrated need, defining and adopting such procurement programs for capacity and energy from renewable resources would not be in the public interest until a need for such programs is established and the market, technology and regulatory conditions within which those programs would operate are better known.

<u>Growth of Renewables and the Lack of Public Interest Benefit from Additional Programs</u>

The growth of renewable generation on DESC's system has indeed been dramatic over the past five years. As of January 31, 2020, approximately 746 megawatts ("MW") of renewable solar generating capacity (residential, commercial/industrial, utility scale, and community solar) has been installed on the DESC system. This represents approximately 18% of DESC's five-year average retail peak demand. This is a remarkable growth in renewable capacity on DESC system in light of the fact that there was negligible capacity installed only five years ago. The amount of renewable energy supplied by these resources to DESC's customers is commensurate with that growth.

Furthermore, DESC has signed power purchase agreements ("PPAs") representing an additional 332 MW. These additional resources would bring the percentage of renewable resources on DESC's system to approximately 25% of DESC's five-year average retail peak demand. Again, this is a remarkable growth in renewable capacity on DESC's system, in light of the fact that there was negligible capacity installed only five years ago. The utility scale renewable generation that is under contract and installed or expected to be installed on DESC's system by the close of the year totals 975 MW. Below is a chart that reflects the substantial increase of utility-scale renewable capacity on DESC's system since 2015.




Therefore, there is no reason to believe that programs to add additional renewable resources to DESC's system would be beneficial to the public interest. As indicated above, under the terms of Act No. 62 of 2019 and PURPA, and within the broad parameters they set, DESC must purchase any renewable resources that a developer wishes to build within DESC's balancing area. It must do so at rates which are competitive with DESC's alternative sources of generation (i.e., avoided cost rates). These rates are set under Commission oversight and authority. There is no ceiling on the amount of renewable capacity or energy that DESC must purchase from qualifying renewable energy facilities.

In effect, under the terms of Act No. 62 of 2019 and PURPA, DESC and other utilities are always conducting an RFP for procuring additional energy and capacity from renewable resources within their balancing areas. It is not clear how additional programs for the procurement of renewable energy and capacity could benefit the public.

Furthermore, as the Commission is well aware, the technology, market conditions, and cost structures for renewable energy and capacity are changing rapidly. The energy sector in the United States generally is subject to unprecedented levels of change. Presently, important questions remain unresolved concerning how the Commission will ultimately calculate the variable integration costs associated with intermittent renewable resources and other matters concerning the valuation of such resources and procedural matters related to things like interconnection and the interconnection queue. Under these conditions especially, defining programs for the procurement of renewable energy capacity in advance of the need for such programs would not be wise or efficient. It would necessarily mean that those programs were based on information concerning technology, market conditions, and cost structures which will be outdated at the time that the need for the programs arises.

The Mandatory Nature of Avoided Cost Pricing under Act No. 62 and PURPA

An important factor negating the public benefit from additional renewable procurement programs is the fact that the price DESC and other utilities currently offer for additional renewable generation is the highest price that can be required to be offered by law under Act No. 62 of 2019 and PURPA. Specifically, S.C. Code Ann. § 58-41-20(B) requires the Commission "[i]n implementing this chapter" to ensure that the "rates for the purchase of energy and capacity fully and accurately reflect the electric utility's avoided costs" as that term is defined by S.C. Code Ann. § 58-41-10(2). S.C. Code Ann. § 58-41-20(A) states that "[a]ny decisions by the commission [under the statute] shall be . . .consistent with PURPA." Both of those statutes limit the price that must be paid for renewable energy to avoid costs. Accordingly, those statutes would not allow the Commission to adopt programs for the procurement of energy and capacity from renewable energy facilities if those programs would require customers to pay more than the avoided cost of that energy and capacity as defined by S.C. Code Ann. § 58-41-20(B)(1) and PURPA.

The Siting Act and the Current Review of Generation Procurement Decisions

Without waiving in any way its position that consideration of a competitive procurement program for all generation requirements is beyond the scope of the authority granted to the Commission by S.C. Code Ann. § 58-41-20(E)(2) and other statutes, DESC would respectfully suggest that, apart from its after-the-fact review of procurements as a part of its ratemaking function, the Commission's statutory authority to review the procurement of energy and capacity by utilities is defined by the Utility Facility Siting and Environmental Protection Act (the "Siting Act"). The Siting Act requires the Commission to review and certify the need for any new major generating facilities upon application by the utility. For a siting application to be approved, the Commission must find "that the facilities will serve the interests of system economy and reliability." S.C. Code Ann. § 58-33-160(1)(a)-(b).

As the Commission is aware, in the docket to consider and approve the merger between DESC and SCE&G, Docket No. 2017-370-E, DESC and the South Carolina Solar Business Alliance, entered a settlement agreement (the "Settlement Agreement") dated November 30, 2018, related to its showing of system economy and reliability in future Siting Act proceedings. That Settlement Agreement requires DESC to issue an RFP prior to the acquisition of any new generating resources with a capacity of more than 75 MW. It specifies the roles of ORS and an independent evaluator working in tandem with ORS in that process. These provisions fully

protect any interest that the parties may have in the future acquisition of generating resources by DESC.

Substantively, the Settlement Agreement requires that the RFP constitute a "competitive all source solicitation," but properly grants the utility discretion concerning "the final RFP and bid instructions," and "the final bid evaluation criteria," as well as the timing of the RFP process. Settlement Agreement at p. 3-4. While these items are left to the discretion of the utility, they are subject to review and evaluation by the independent evaluator and ORS, and ultimately to review by the Commission in the resulting Siting Act proceeding. This is a generally appropriate approach to RFPs because it preserves the flexibility necessary to ensure that the RFP process is effective.

Order No. 2007-626 and Certain Factors Related to Generation Procurement Decision

The Settlement Agreement's approach to RFPs is also consistent with the policy considerations identified by the Commission in Order No. 2007-626, dated September 13, 2007. In that order the Commission recognized "the need for regulated utilities to maintain a diverse generation mix and appropriate fuel diversity, [as well as] the responsibility of utilities to maintain reliable and economical electricity supplies, and financial and transmission issues regarding some merchant generators." Order No. 2007-626 at p. 2. The Commission "concluded from the record that the risk to reliable, low-cost electricity increases in magnitude as mandatory RFPs are applied to peaking capacity, to intermediate capacity and to base load capacity requirements, respectively." *Id*. Accordingly, the Commission limited the RFP requirement set forth in that order to peaking resources only, excluded intermediate and baseload resources, and did not propose any particular requirements as to the timing, bid instructions, and final bid evaluation criteria for those RFPs.

The dangers of including more prescriptive provisions in any RFP requirement are precisely that those requirements may interfere with the utility's ability to procure the most operationally beneficial and economically efficient generating resources to serve its customers. A utility must be in a position to carefully define the scope of the resources it intends to acquire at any point. Specifically, the utility must be able to define whether those resources are to be dispatchable or intermittent; whether they are to be baseload, intermediary, or peaking resources; their ability to provide ancillary services generally and the value of ancillary services that they can provide to the system generally; their location on the grid as that location determines the value of the voltage support and other ancillary services that the resources can provide; transmission constraints and other locational considerations that could impact reliability; ramp rates and black start capabilities; fuel efficiency both generally and as affected by the variable loading of the generator; environmental constraints and air emissions; availability issues including the scheduling of planned outages and maintenance; required availability factors and means of enforcing those factors; fuel supply and fuel supply reliability considerations; and a myriad of other factors. It is simply not possible to define these factors in the abstract. Accordingly, flexibility and discretion in formulating and evaluating an RFP is critical.

Conclusion

In summary, DESC respectfully submits that:

1. The public interest would not be benefited by new programs to provide for the procurement of energy and capacity resources from renewable energy facilities located in

DESC's balancing area. Under the terms of Act No. 62 of 2019 and PURPA, an extraordinarily large amount of renewable energy and capacity are being procured. There is no requirement for additional procurement.

2. Any additional procurement programs would have to comply with the requirements of S.C. Code Ann. § 58-41-20(B)(1), that the "rates for the purchase of energy capacity fully and accurately reflect the electric utility's avoided costs" as that term is defined by S.C. Code Ann. § 58-41-10(2). Accordingly, any such program could not require the utility's customers to pay a higher rate for renewable energy and capacity than is currently available under the terms of Act No. 62 of 2019 and PURPA.

3. The scope of this proceeding is properly limited to the authorization granted by the General Assembly under S.C. Code Ann. § 58-41-20(E)(2) for the Commission to evaluate whether procurement programs for renewable energy and capacity resources are in the public interest. Consideration of proposals to require RFPs for all new generation resources are outside the scope of this proceeding.

4. The Commission's regulatory authority under the Siting Act and general rate statutes sufficiently protects the public interest as it concerns the procurement of new generation resources for utility systems, generally. The additional protections provided by the Settlement Agreement, entered in Docket No. 2017-370-E, further establish that the public interest is protected vis-à-vis DESC.

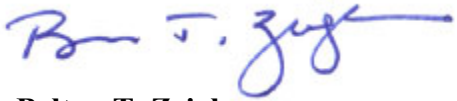
5. Any consideration of a general RFP requirement would need to recognize the extraordinary complexity of utility generation procurement decisions and carefully consider the discretion that a utility must have to ensure that the relevant and unique factors of each acquisition are fully evaluated.

Based on the foregoing, DESC respectfully requests the Commission to rule that the public interest does not require additional consideration of programs for the procurement of energy capacity from renewable facilities located within the utility's balancing area at this time.

Thank you for your attention to these matters,

Best regards,

**Womble Bond Dickinson (US) LLP**



**Belton T. Zeigler**

cc: All parties of record